MONTANA LEGISLATIVE HISTORY

Chapter 72 19 83

Bill H 355 S _____ Original bill & history ✓C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	2-2	✓C	Hearing Date(s)	3-1	✓C
	2-4	✓C		_____	___C
	_____	___C		_____	___C
	_____	___C		_____	___C
Date Out	_____	___C			

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

HOUSE BILL NO. 355

INTRODUCED BY Sands, Ramirez, Addy, Spaeth, Bradley

BY REQUEST OF THE MONTANA SUPREME COURT AND THE MONTANA SUPREME COURT COMMISSION ON THE RULES OF EVIDENCE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO EVIDENCE; AMENDING SECTIONS 26-1-101, 26-1-102, 26-1-201 THROUGH 26-1-203, 26-1-302, 26-1-303, 26-1-401, 26-1-402, 26-1-501, 26-1-601, 26-1-602, 26-1-607, 26-1-622, 26-1-623, 26-1-805, 26-2-104, 26-2-302, AND 26-2-404, MCA; REPEALING SECTIONS 26-1-107, 26-1-108, AND 26-1-621, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 26-1-101, MCA, is amended to read:

"26-1-101. General definitions. (1) ~~The~~ "Direct examination" is the first examination of a witness ~~by the party producing him is denominated the "direct examination";~~ on a particular matter. "Cross examination" is the examination of ~~the same~~ a witness ~~upon the same matter by the adverse~~ by a party~~, the "cross-examination". The direct examination must be completed before the cross-examination begins unless the court otherwise directs~~ other than the direct examiner.

(2) ~~"Judicial evidence"~~ "Evidence" is the means~~, sanctioned by law,~~ of ascertaining in a judicial proceeding the truth respecting a question of fact~~,~~ including but not limited to witness testimony, writings, physical objects, or other things presented to the senses.

(3) A "leading question" is a question which suggests to the witness the answer which the examining party desires ~~is denominated a "leading question" or "suggestive question". On a direct examination leading questions are not allowed, except in the sound discretion of the court under special circumstances making it appear that the interests of justice require it.~~

(4) "Proof" is ~~the effect of evidence,~~ the establishment of a fact by evidence.

(5) A "witness" is a person whose declaration under oath is received as evidence for any purpose, whether such declaration be made on oral examination or by deposition or affidavit."

Section 2. Section 26-1-102, MCA, is amended to read:

"26-1-102. Definitions -- kinds of evidence. (1) (a) "Conclusive evidence" ~~or "unanswerable evidence"~~ is that which the law does not permit to be contradicted. ~~For example, the record of a court of competent jurisdiction cannot be contradicted by the parties to it.~~

(b) No evidence is by law made conclusive ~~or unanswerable~~ unless so declared by ~~this code~~ statute.

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INTRODUCED BILL

(2) "Cumulative evidence" is additional evidence of the same character to the same point.

(3) "Corroborative evidence" is additional evidence of a different character to the same point.

~~(3)~~(4) "Direct evidence" is that which proves ~~the~~ a fact ~~in dispute directly~~, without an inference or presumption, and which in itself, if true, ~~conclusively~~ establishes that fact. ~~For example, if the fact in dispute be an agreement, the evidence of a witness who was present and witnessed the making of it is direct.~~

~~(4) (c)~~(5) ~~"Indirect evidence"~~ "Circumstantial evidence" is that which tends to establish the a fact ~~in dispute~~ by proving another and which, though true, does not of itself conclusively establish that fact but affords an inference or presumption of its existence. ~~For example, a witness proves an admission of the party to the fact in dispute. This proves a fact from which the fact in dispute is inferred.~~

~~(b) Indirect evidence is of two kinds:~~

~~(i) inferences; and~~

~~(ii) presumptions.~~

~~(5)~~(6) "Prima facie evidence" is that which ~~suffices for the proof of~~ proves a particular fact until contradicted and overcome by other evidence. ~~For example, the certificate of a recording officer is prima facie evidence of a record but it may afterward be rejected upon proof that there is no such record.~~"

Section 3. Section 26-1-201, MCA, is amended to read:

"26-1-201. Questions of law. ~~All~~ Except as provided in Article II, section 7, of the Montana constitution, all questions of law, including the admissibility of testimony, the facts preliminary to such admission, the construction of statutes and other writings, and other rules of evidence, ~~are to~~ must be decided by the court, ~~and all discussions of law addressed to it. Whenever the knowledge of the court is, by this code, made evidence of a fact, the court is to declare such knowledge to the jury, which is bound to accept it.~~"

Section 4. Section 26-1-202, MCA, is amended to read:

"26-1-202. Questions of fact. ~~All~~ If a trial is by jury, all questions of fact, ~~where the trial is by jury,~~ other than those mentioned in 26-1-201 ~~are to~~ must be decided by the jury, and all evidence thereon ~~is to~~ must be addressed to them, except ~~when~~ as otherwise provided by ~~this code~~ law. If the trial of a question of fact is not by jury, all evidence thereon must be addressed to the trial court, which shall decide such question."

Section 5. Section 26-1-203, MCA, is amended to read:

"26-1-203. Who to judge effect ~~or~~ and value of evidence. The jury, subject to the control of the court, ~~in~~

~~the cases specified in this code~~ is the judge of the effect or and value of evidence addressed to it, except when the evidence is declared to be conclusive. The court is the judge of the effect and value of evidence addressed to it."

Section 6. Section 26-1-302, MCA, is amended to read:

"26-1-302. Witness presumed to speak the truth -- how presumption rebutted. A witness is presumed to speak the truth. ~~This presumption, however, may be repelled by the manner in which he testifies, by the character of his testimony, by evidence affecting his motives or his character for truth, honesty, or integrity, or by contradictory evidence; and the~~ The jury or the court in the absence of a jury is the exclusive judge of his credibility. This presumption may be controverted and overcome by any matter that has a tendency to disprove the truthfulness of a witness' testimony; such matters include but are not limited to:

(1) the demeanor or manner of the witness while testifying;

(2) the character of the witness' testimony;

(3) bias of the witness for or against any party involved in the case;

(4) interest of the witness in the outcome of the litigation or other motive to testify falsely;

(5) the witness' character for truth, honesty, or

integrity;

(6) the extent of the witness' capacity and opportunity to perceive or capacity to recollect or to communicate any matter about which he testifies;

(7) inconsistent statements of the witness;

(8) an admission of untruthfulness by the witness;

(9) other evidence contradicting the witness' testimony."

Section 7. Section 26-1-303, MCA, is amended to read:

"26-1-303. Instructions to jury on how to evaluate evidence. The jury is to be instructed by the court on all proper occasions that:

(1) ~~that~~ their power of judging ~~of~~ the effect of evidence is not arbitrary but to be exercised with legal discretion and in subordination to the rules of evidence;

(2) ~~that~~ they are not bound to decide in conformity with the declarations of any number of witnesses which do not produce conviction in their minds, against a less number or against a presumption or other evidence satisfying their minds;

(3) ~~that~~ a witness false in one part of his testimony is to be distrusted in others;

(4) ~~that~~ the testimony of ~~an accomplice~~ a person legally accountable for the acts of the accused ought to be viewed with distrust~~, and the evidence of the oral~~

admissions of a party with caution;

(5) that evidence is to be estimated not only by its own intrinsic weight but also according to the evidence which it is in the power of one side to produce and of the other to contradict; and therefore

(6)(5) that if weaker and less satisfactory evidence is offered when and it appears that it is within the power of the party to offer stronger and more satisfactory was within the power of the party evidence, the evidence offered should be viewed with distrust."

Section 8. Section 26-1-401, MCA, is amended to read:

"26-1-401. Who has the burden of producing evidence. The party holding the affirmative of the issue must produce the evidence to prove it; therefore, the initial burden of proof lies producing evidence as to a particular fact is on the party who would be defeated if no evidence were given on either side. Thereafter, the burden of producing evidence is on the party who would suffer a finding against him in the absence of further evidence."

Section 9. Section 26-1-402, MCA, is amended to read:

"26-1-402. Who has the burden of persuasion. Each Except as otherwise provided by law, a party must prove his own affirmative allegations. Evidence need not be given in support of a negative allegation, except when such negative allegation is an essential part of the statement of the

right or title on which the cause of action is founded, nor even in such case when the allegation is a denial of the existence of a document, the custody of which belongs to the opposite party has the burden of persuasion as to each fact the existence or nonexistence of which is essential to the claim for relief or defense he is asserting."

Section 10. Section 26-1-501, MCA, is amended to read:

"26-1-501. Inference defined. An "inference" is a deduction which the reason of the jury makes trier of fact may make from the facts proved, without an express direction of the law to that effect evidence."

Section 11. Section 26-1-601, MCA, is amended to read:

"26-1-601. Complete list List of conclusive presumptions. The following presumptions and no others are deemed conclusive:

(1) a malicious and guilty intent, from the deliberate commission of an unlawful act for the purpose of injuring another;

(2) the truth of the facts recited, from the recital in a written instrument between the parties thereto or their successors in interest by a subsequent title; but this rule does not apply to the recital of a consideration;

(3)(1) the truth of a declaration, act, or omission of a party, as against that party in any litigation arising out of such declaration, act, or omission, whenever a party he

has, by ~~his own~~ such declaration, act, or omission, intentionally ~~and deliberately~~ led another to believe a particular thing true and to act upon such belief; ~~he cannot in any litigation arising out of such declaration, act, or omission be permitted to falsify it~~;

~~(4)~~(2) that a tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation;

~~(5) the issue of a wife cohabiting with her husband who is not impotent is indisputably presumed to be legitimate~~;

~~(6)~~(3) the judgment or order of a court, when which is declared by ~~this code~~ statute to be conclusive~~, but such judgment or order must be alleged in the pleadings if there be an opportunity to do so; if there be no such opportunity, the judgment or order may be used as evidence~~;

~~(7)~~(4) any other presumption which, by statute, is expressly made conclusive."

Section 12. Section 26-1-602, MCA, is amended to read:

"26-1-602. ~~Definition and examples of disputable~~ Disputable presumptions. All other presumptions are ~~satisfactory if uncontradicted, they are denominated~~ "disputable presumptions" and may be controverted by other evidence. The following are of that kind:

(1) ~~that a~~ A person is innocent of crime or wrong~~;~~

(2) ~~that an~~ An unlawful act was done with an unlawful intent~~;~~

(3) ~~that a~~ A person intends the ordinary consequence of his voluntary act~~;~~

(4) ~~that a~~ A person takes ordinary care of his own concerns~~;~~

(5) ~~that evidence~~ Evidence willfully suppressed would be adverse if produced~~;~~

(6) ~~that higher~~ More satisfactory evidence would be adverse ~~from inferiority being produced~~; if weaker and less satisfactory evidence is offered and it is within the power of the party to offer more satisfactory evidence.

(7) ~~that money~~ Money paid by one to another was due ~~to~~ the latter~~;~~

(8) ~~that a~~ A thing delivered by one to another belonged to the latter~~;~~

(9) ~~that an~~ When the instrument evidencing an obligation has been delivered up to the debtor, the obligation has been paid~~;~~

(10) ~~that former~~ Prior rent or installments have been paid when a receipt for ~~latter~~ later rent or installments is produced~~;~~

(11) ~~that things~~ Things which a person possesses are owned by him~~;~~

(12) ~~that a~~ A person is the owner of property ~~from~~

exercising if he exercises acts of ownership over it or from there is common reputation of his ownership.

(13) that a A person in possession of an order on himself for the payment of money, on or the delivery of a thing, has paid the money or delivered the thing accordingly.

(14) that a A person acting in a public office was regularly appointed to it.

(15) that official Official duty has been regularly performed.

(16) that a A court or judge, acting as such, whether in this state or any other state or country, was acting in the lawful exercise of its or his jurisdiction.

(17) that a A judicial record, when not conclusive, does still correctly determine or set forth the rights of the parties.

(18) that all All matters within an issue were laid before the jury and passed upon by them, and, in like manner, that all matters within a submission to arbitration were laid before the arbitrators and passed upon by them.

(19) that private Private transactions have been fair and regular.

(20) that the The ordinary course of business has been followed.

(21) that a A promissory note or bill of exchange was

given or endorsed for a sufficient consideration.

(22) that an An endorsement of a negotiable promissory note or bill of exchange was made at the time and place of making the note or bill.

(23) that a A writing is truly dated.

(24) that a A letter duly directed and mailed was received in the regular course of the mail.

(25) There is an identity of persons from when there is an identity of name, names.

(26) that a A person not heard from in 7 years is dead.

(27) that acquiescence Acquiescence followed from a belief that the thing acquiesced in was conformable to the right or fact.

(28) that things Things have happened according to the ordinary course of nature and the ordinary habits of life.

(29) that persons Persons acting as partners have entered into a contract of partnership.

(30) that a A man and a woman deporting themselves as husband and wife have entered into a lawful contract of marriage.

(31) that a A child born in lawful wedlock, there being no divorce from bed and board, is legitimate.

(32) that a A thing once proved to exist continues as long as is usual with things of that nature.

(33) ~~that the~~ The law has been obeyed~~;~~.

~~(34) that a document or writing more than 30 years old is genuine, when the same has been since generally acted upon as genuine by persons having an interest in the question and its custody has been satisfactorily explained;~~

~~(35)~~(34) ~~that a~~ A printed and published book purporting to be printed or published by public authority was so printed or published~~;~~.

~~(36)~~(35) ~~that a~~ A printed and published book purporting to contain reports of cases adjudged in the tribunals of the state or country where the book is published contains correct reports of such cases~~;~~.

~~(37)~~(36) ~~that a~~ A trustee or other person whose duty it was to convey real property to a particular person has actually conveyed to him~~;~~. ~~when such~~ This presumption applies when it is necessary to perfect the title of such person or his successor in interest~~;~~.

~~(38)~~(37) ~~the~~ When there has been uninterrupted use by the public of land for a burial ground for 5 years, with the consent of the owner and without a reservation of his rights, ~~is presumptive evidence of his intention~~ he intended to dedicate it to the public for that purpose~~;~~.

~~(39)~~(38) ~~that there~~ There was a good and sufficient consideration for a written contract."

Section 13. Section 26-1-607, MCA, is amended to read:

"26-1-607. When writings of a decedent prima facie evidence. The entries and other writings of a decedent, made at or near the time of the transaction and when the decedent was in a position to know the facts stated therein, ~~may be read as~~ are prima facie evidence of the facts stated therein, in the following cases:

(1) when the writing or entry was made against the interest of the person making it;

(2) when it was made in a professional capacity and in the ordinary course of professional conduct;

(3) when it was made in the performance of a duty specially enjoined by law."

Section 14. Section 26-1-622, MCA, is amended to read:

"26-1-622. Official reports and records made pursuant to federal law prima facie evidence. An official written report or record, or duly certified copy thereof, that a person is dead or alive; missing~~;~~; missing in action~~;~~; interned in a neutral country~~;~~; or beleaguered, besieged, or captured by an enemy ~~or is dead or is alive~~, made by any officer or employee of the United States authorized by ~~the act referred to in 26-1-621 or by any other~~ law of the United States to make same, shall be received in any court, office, or other place in this state as prima facie evidence that such person is dead or alive; missing~~;~~; missing in action~~;~~; interned in a neutral country~~;~~; or beleaguered,

besieged, or captured by an enemy ~~or is dead or is alive~~, as the case may be."

Section 15. Section 26-1-623, MCA, is amended to read:

"26-1-623. Presumption of authenticity of finding, report, or record. For the purposes of ~~26-1-621 and~~ 26-1-622, any finding, report, or record or duly certified copy thereof purporting to have been signed by such an officer or employee of the United States as is described in ~~said sections~~ that section shall prima facie be deemed to have been signed and issued by such an officer or employee pursuant to law, and the person signing same shall prima facie be deemed to have acted within the scope of his authority. If a copy purports to have been certified by a person authorized by law to certify the same, such certified copy shall be prima facie evidence of his authority so to certify."

Section 16. Section 26-1-805, MCA, is amended to read:

"26-1-805. Doctor-patient privilege. A Except as provided in Rule 35, Montana Rules of Civil Procedure, a licensed physician or surgeon cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient."

Section 17. Section 26-2-104, MCA, is amended to read:

"26-2-104. Disobedience -- how punished. Disobedience to a subpoena or a refusal to be sworn or to answer as a witness or to subscribe an affidavit or deposition, when required, may be punished as a contempt by the court or ~~officer~~ issuing the subpoena or requiring the witness to be so sworn, to so answer, or to so subscribe; and if the witness be a party, his complaint or answer may be stricken out."

Section 18. Section 26-2-302, MCA, is amended to read:

"26-2-302. Witness required to answer questions. A witness must answer questions legal and pertinent to the matter in issue though his answer may establish a claim against himself, but he need not give an answer which will have a tendency to subject him to punishment for a felony, nor need he give an answer which will have a direct tendency to degrade his character unless it be to the very fact in issue or to a fact from which the fact in issue would be presumed. ~~But a witness must answer as to the fact of his previous conviction for felony.~~"

Section 19. Section 26-2-404, MCA, is amended to read:

"26-2-404. Affidavit of arrested witness -- exoneration of arresting officer. (1) An officer is not liable ~~to the party~~ for making the arrest in ignorance of the facts creating the exoneration but is liable for any subsequent detention of the ~~party~~ witness if such ~~party~~

~~claim~~ witness claims the exemption and ~~make~~ makes an affidavit stating that:

(a) he has been served with a subpoena to attend as a witness before a court, officer, or other person, specifying the same, the place of attendance, and the action or proceeding in which the subpoena was issued;

(b) he has not thus been served by his own procurement with the intention of avoiding arrest; and

(c) he is at the time going to the place of attendance, returning therefrom, or remaining there in obedience to the subpoena.

(2) The affidavit may be taken by the officer and exonerates him from liability for discharging the witness when arrested."

NEW SECTION. Section 20. Repealer. Sections 26-1-107, 26-1-108, and 26-1-621, MCA, are repealed.

-End-

HOUSE BILL NO. 355

INTRODUCED BY SANDS, RAMIREZ, ADDY, SPAETH, YARDLEY

BY REQUEST OF THE MONTANA SUPREME COURT AND THE MONTANA SUPREME COURT COMMISSION ON THE RULES OF EVIDENCE

IN THE HOUSE

January 19, 1983	Introduced and referred to Committee on Judiciary.
February 4, 1983	Committee recommend bill do pass. Report adopted.
February 5, 1983	Bill printed and placed on members' desks.
February 7, 1983	Second reading, do pass.
February 8, 1983	Considered correctly engrossed.
February 9, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 10, 1983	Introduced and referred to Committee on Judiciary.
March 1, 1983	Committee recommend bill be concurred in. Report adopted.
March 3, 1983	Second reading, concurred in.
March 5, 1983	Third reading, concurred in. Ayes, 48; Noes, 0.

IN THE HOUSE

March 5, 1983	Returned to House.
March 7, 1983	Sent to enrolling.
	Reported correctly enrolled.

STATUS SHEET

JUDICIARY COMMITTEE

48 Legislature

No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
	Specifying the time period during which Board of Pardons shall investigate a prisoner to determine his suitability for parole.	1/19/83	Rep. Hammond	1/31/83	Do Pass	1/31/83
	Revising and clarify the laws relating to evidence.	1/19/83	Rep. Sands	2/2/83	Do Pass	2/4/83
	Revise the laws relating to immunization and indemnification of governmental employees.	1/19/83	Rep. Donaldson	2/2/83	Do Pass, As Amended	2/5/83
	Prohibiting discrimination on the basis of sex or marital status in the issuance or operation of insurance policies and retirement plans.	1/19/83	Rep. J. Brown	1/28/83	Do Pass, As Amended	2/8/83
	Providing a voluntarily induced intox. or drugged condition may not be considered an impairment to a defendant's mental capacity.	1/19/83	Rep. Sands	1/31/83	Do Pass	2/2/83
	Expanding the scope of appeal by the State in crim. cases by allowing interlocutory appeals on controlling questions of law.	1/19/83	Rep. Sands	1/27/83	Do Not Pass	1/27/83

CS-32

MARCEL TURCOTT, Montana Magistrates Association, stated the present fine is not high enough. A $25 fine is not adequate for a code violation that could cause widespread damages to an individual or property. The present fine does not give judges the ability to work with second, third, or fourth offenders. Most of the misdemeanors have an automatic $500 fine or 6 months inprisonment if a penalty is not stated. There are abuses with some of the laws. There are over 600 judges and they are all individuals, TURCOTT stated. There is a very simple appeal process with city court judgements. Within ten days of the judgement the person can appeal to district court, however, there is language in the code that would prevent this from becoming abusive.

BILL WARE, Montana Chiefs of Police Association, supported the proposed legislation.

RALPH KNAUSS, Montana Rifle & Pistol Association, also supported the bill.

REPRESENTATIVE KELLY ADDY, District 62, supported the bill. He stated if is a serious crime and warrents more than a $25 fine. He noted there is no mandatory minimum.

There were no further proponents.

There were no opponents.

REPRESENTATIVE HANNAH closed his remarks on the bill.

CHAIRMAN BROWN noted that REPRESENTATIVE SAUNDERS has a bill that would amend the definition of firearms to include BB guns and pellets.

REPRESENTATIVE HANNAH noted REPRESENTATIVE SAUNDERS did discuss this with him. He would not object to the bill being amended as such if it would not result in a negative action by the committee.

TURCOTT added pellet guns have quite a bit of velocity behind them. The argument against including them in the definition of firearms is that juveniles use pellet guns. However, they often use them destructively, for example, shooting out street lights. Juveniles charges with this would go to youth court and be fined up to $50.

The hearing on the bill closed.

HOUSE BILL 355

REPRESENTATIVE SANDS, sponsor, stated the bill would generally revise the laws relating to evidence. The bill was requested by the Supreme Court. The sponsor noted that 80% of the bill is stylistic and grammer changes. The existing evidence law was

originally written in 1895 and is now out-of-date in parts. For example, the law makes references to positions that no longer exist, such as the Secretary of War. The Montana Rules of Evidence were adopted in 1977.

SAM HAMMOND, representative of the Supreme Court Commission on the Rules of Evidence, was in favor of the bill. A joint resolution last session mandated the Supreme Court to study the evidence statutes. The purpose of the resolution was to give some consideration to the statutes that were left over after the adoption of the Rules of Evidence in 1977. The commission did three things: (1) considered whether there were any conflicts between the statutes and the Rules of Evidence, (2) considered whether each statute was really needed, (3) examined the specific language of each statute to make appropriate changes.

The Commission met in December and reviewed the statutes and the Rules of Evidence to comply with the three objectives listed above. The proposed bill is the result of the meeting.

MARC RACICOT was in favor of the bill. RACICOT noted on page 7, lines 6 through 10 and on page 10, lines 9 through 12 states "if weaker and less satisfactory evidence is offered and it is within the power of the party to offer more satisfactory evidence." Typically in criminal cases, someone would try to offer that instruction. When that instruction is used and the person does not testify, his 5th amendment right would be violated. RACICOT, therefore, stated that the bill should be amended in those areas to say "except in criminal cases".

J.C. WEINGARTNER, State Bar of Montana, was in favor of the bill.

MICHAEL ABLEY of the Supreme Court, supported the proposed legislation.

There were no further proponents.

There were no opponents.

REPRESENTATIVE SANDS closed the bill.

REPRESENTATIVE EUDAILY asked if the Commission agreed with RACICOT's amendments.

HAMMOND replied there was some discussion to see if this would be a conflict. There was some uncertainty as to whether it was limited to civil cases. Rather than create confusion the Commission suggested the language as proposed in the bill. HAMMOND stated he would not object if it was limited to civil cases.

REPRESENTATIVE ADDY asked why the age of the document was eliminated. It was replied that section is currently in the Rules of Evidence.

The hearing on the bill closed.

HOUSE BILL 389

REPRESENTATIVE MENAHAN, sponsor, stated House Bill 389 will provide for motor vehicle liability coverage of persons without regard to the motor vehicles owned or operated by the insured.

The sponsor stated the laws concerning buying insurance are written in favor of the insurance industry rather than the consumer. REPRESENTATIVE MENAHAN stated he recently tried to buy insurance on himself as a driver. Instead the insurance companies insisted he could only buy insurance on his car. What if a person doesn't own a car? The sponsor believes insurance should follow the person to whatever vehicle he drives, whether it is his or not.

There is a discrepancy in rates depending upon where an individual lives. The premium for nonoperator insurance would cost $124 because the person does not own a car. If the person owned a car the same type of coverage would only cost $60. "What if a person drives a company car and only wants to insure himself and not his family?" the sponsor questioned. He was informed that if he does not insure his family and they drive someone else's car, that person could sue him.

The sponsor was also told by the insurance companies that if a motorist only has liability insurance, coverage occurs only when another car runs into your car. Liability would not cover the passengers or the driver of the car. The sponsor stated, however, that is why most people have health insurance.

REPRESENTATIVE MENAHAN stated he has written to the NCSL asking about insurance laws in Montana and other states. The reply was that no state has a drivers insurance because this would reduce premiums.

A driver can only drive one car at a time, yet he must pay insurance on all his vehicles. The insurance follows the car, yet it should follow the driver.

MORRIS GULLICKSON, United Transportation Union, was in support of the bill. He submitted EXHIBIT G as his testimony.

DOUG OLSON was also in favor of the bill. OLSON stated he has a hobby of fixing up cars. In order to comply with the law he must carry liability insurance on every vehicle. Since he is the only

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL House Bill 355 DATE 2/2/83

SPONSOR Rep. Sands

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
J.C. Weingartner	Helena	Ex Comm. State Bar	L	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

REPRESENTATIVE JENSEN moved the amendments offered by CHARLES GRAVELY. See EXHIBIT M. REPRESENTATIVE BERGENE seconded.

REPRESENTATIVE HANNAH made a substitute motion of DO NOT PASS. This motion was seconded by REPRESENTATIVE RAMIREZ.

REPRESENTATIVE ADDY said that there were two things the bill does that I like - one is it disqualifies a peace officer in certain situations from acting as a coroner and on page 3, at the bottom if we were to strike out "any attorney representing the estate or representing any interested heir or devisee of the decedent" and insert "and the county attorney and any juror", this would allow the jurors to ask questions at the inquest.

REPRESENTATIVE DAVE BROWN suggested that the language on the bottom of page 1 and the top of page 2 through line 10 be striken and by striking subsection 2 on page 3 at the bottom of the page. He felt it would take two amendments to make this a good bill.

REPRESENTATIVE HANNAH withdrew his motion.

REPRESENTATIVE JENSEN withdrew his motion.

REPRESENTATIVE ADDY moved to strike subsection 3 on the bottom of page 1 and through the lines on page 2, and on page 3, line 21, strike line 21 in its entirety through "decedent" on line 22 and insert "juror". REPRESENTATIVE JENSEN seconded the motion. The motion carried unanimously.

REPRESENTATIVE JENSEN moved that the bill DO PASS, AS AMENDED. REPRESENTATIVE BERGENE seconded.

REPRESENTATIVE EUDAILY moved that they change "law enforcement" to "peace officer". REPRESENTATIVE KEYSER seconded the motion. The motion carried unanimously.

REPRESENTATIVE JENSEN moved that the bill DO PASS, AS AMENDED. REPRESENTATIVE BERGENE seconded. The motion carried unanimously.

HOUSE BILL 355

REPRESENTATIVE JENSEN moved that the bill DO PASS. REPRESENTATIVE SPAETH seconded. The motion carried unanimously.

STANDING COMMITTEE REPORT

February 4, 19 83

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 355

_____ reading copy (_____)
color

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO EVIDENCE; AMENDING SECTIONS 26-1-101, 26-1-102, 26-1-201 THROUGH 26-1-203, 26-1-302, 26-1-303, 26-1-401, 26-1-402, 26-1-501, 26-1-601, 26-1-602, 26-1-607, 26-1-622, 26-1-623, 26-1-805, 26-2-104, 26-2-302, AND 26-2-404, MCA; REPEALING SECTIONS 26-1-107, 26-1-108, AND 26-1-621, MCA."

Respectfully report as follows: That HOUSE Bill No. 355

DO PASS

DAVE BROWN,
Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

48th LEGISLATIVE SESSION

COMMITTEE ON Senate Judiciary

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO NOT DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
251	1-25-83	2-7-83	2-7-83					2-7-83	
257	1-31-83	3-19-83	3-19-83				3-19-83		
265	2-2-83	3-4-83	3-4-83				3-4-83		
272	2-2-83	3-10-83	3-10-83				3-10-83		
307	2-7-83	2-9-83	2-10-83					2-10-83	
320	2-14-83	3-2-83	TABLED						
323	2-2-83	2-11-83	2-17-83						2-17-83
327	2-7-83	2-9-83	2-17-83						2-17-83
331	2-2-83	3-2-83	3-19-83					3-19-83	
350	2-7-83	2-9-83	2-9-83				2-9-83		
355	2-10-83	3-1-83	3-1-83				3-1-83		
357	3-3-83	3-17-83	3-24-83					3-24-83	
362	2-8-83	3-1-83	3-24-83					3-24-83	
369	2-3-83	2-10-83	2-10-83				2-10-83		
370	2-7-83	3-1-83	3-19-83					3-19-83	
376	2-11-83	3-4-83	3-19-83					3-19-83	

(Use Separate Sheet for Senate, House Bills, and Resolutions)

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 1, 1983

The thirty-second meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on March 1, 1983 at 10:15 a.m. in Room 325, State Capitol.

ROLL CALL: All members were present, except for Senator Halligan who was excused.

CONSIDERATION OF HOUSE BILL 355: Representative Sands advised that he was sponsoring this bill at the request of the Montana Supreme Court and the Montana Supreme Court Commission on the Rules of Evidence. The bill basically clarifies the laws relating to evidence. A major portion of HB355 is grammar and stylistic changes. Its second purpose is to make the statutes consistent with the new Montana Rules of Evidence adopted in 1977, eliminate those provisions which are duplicated and repeal those provisions which are unconstitutional. Finally, it eliminates those provisions which do not make sense.

PROPONENTS: J.C. Weingartner, representing the Executive Committee of the State Bar, advised that this bill had been the result of a study resolution requested by the previous legislature and he urged the Committee to give it favorable consideration.

Mike Abley, representing the Supreme Court, also testified in support of the bill.

There being no further proponents and no opponents, the hearing moved into executive action.

ACTION ON HOUSE BILL 355: Senator Mazurek moved SB355 BE CONCURRED IN. This motion passed unanimously.

CONSIDERATION OF HOUSE BILL 362: Representative Sands informed the Committee that he was introducing this bill at the request of the Task Force on Corrections. HB362 will make it clear that voluntary intoxication cannot be used as an excuse for the minimum sentencing provisions. Representative Sands emphasized that this bill is not designed to punish people that are intoxicated in such a manner that they do not know what they are doing as this type of person would not have the mental state necessary to form the criminal intent. He then advised that the House had added an amendment to the bill on the floor which provides that this law will only apply to the second offense. A proposed amendment was then distributed which would remove the exception for first offenses, as Representative Sands felt the current language creates an exception for the first offender (see Exhibit "A"). He also stated that there is plenty of flexibility available with the bill as it was originally introduced.

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983 Date 3-1-83

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Daniels, M. K. (D)	✓		
Galt, Jack E. (R)	✓		
Halligan, Mike (D)			✓
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)	✓		
Turnage, Jean A. (R)	✓		

DATE 3-1-83

COMMITTEE ON Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppo
Mike Abley	Supreme Court	HB 355	✓	
J.C. Weingartner	Ex Comm - State Bar	HB 355	✓	

STANDING COMMITTEE REPORT

March 1 19 33

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration House Bill No. 355

Sands (Mazurek)

Respectfully report as follows: That House Bill No. 355

third reading bill

BE CONCURRED IN

~~DO PASS~~

Jean A. Turnage, Chairman.

STATE PUB. CO.
Helena, Mont.